

EXHIBIT C

December 19, 2013

RE: 2014FOIA3585

Dear Ms. Pavlik-Keenan:

I am writing in response to your two letters addressed to Ian Head at Center for Constitutional Rights, postmarked December 4th (but dated November 27th) and received in my office on December 9th. The letters regard a Freedom of Information Act request submitted by the Center for Constitutional Rights (CCR) and Detention Watch Network (“DWN”) to Immigration Customs Enforcement (ICE) (“the FOIA Request”). After continued unsuccessful attempts to discuss our request with the ICE FOIA office, we are seeking confirmation that ICE will respond immediately to this time-sensitive matter of public concern.

BACKGROUND

We filed the FOIA Request to obtain important information regarding the Detention Bed Mandate, Bed Mandate and/or Detention Quota, decision-making surrounding the mandate, and the impact the Mandate has had on detention policy and detention contracting decisions nationwide from June 2006 to the present.¹ There is an increasingly urgent need for the public to be better informed on these issues, especially with the upcoming Congressional appropriations debate likely to take place early next year, with hearings beginning as early as February 2014.

In response to the FOIA Request, in an envelope postmarked December 4, 2013, you sent two responses, somewhat inconsistent, to the FOIA Request. The first letter acknowledged receipt of our request by your office on November 27, 2013 and invoked a “10 day extension” in responding to our request, but “assured” us that ICE will be responding to our request “as expeditiously as possible.” (See Ex. A, “Letter 1”). The second letter also acknowledges receipt of our request on November 27, 2013, but states that the FOIA Request is “too broad” and asks us to resubmit the request. (See Ex. B, “Letter 2”). Without citing a specific authority, Letter 2 mandates a response within 10 days ICE, without which your office will administratively close our case.

On several occasions during the week of December 9th, immediately upon receiving your letters, our office attempted to confirm that we do not want this request administratively closed, as well as obtain further clarification as the issues outlined in Letter 2. We did so by phone and email. On December 13th, a representative of the ICE FOIA office informed us that a supervisor would call us back, presumably immediately, to address our concerns and work with us to process the request. As of the date of this letter, we have not received any further communication from your office.

¹ Please review our November 25, 2013 FOIA Request, Section A (“Purpose of the Request”), for full description.

LETTER 2

First, you state the request was “too broad in scope or did not specifically identify the records” we are seeking. (*See* Ex. B, Letter 2, at 1). The FOIA Request meets the requesters’ obligation to “reasonably describe” the materials sought, *see* 5 U.S.C. § 552(a)(3). The subject matter of the request—the detention bed quota and/or mandate—is well-known by ICE and has received considerable media attention. Additionally, we seek specific records, some of which are “agreements” of a specified nature, subject, parties and time period; data and statistics regularly held and produced within the agency; records related to three specific media stories; reports and memoranda between specific custodians and offices related to the detention bed mandate. The FOIA Request is in no way “too broad” or unspecific to justify ICE’s evading its FOIA obligations, and we have sought --for over a week -- further clarification by your office. As you are aware, FOIA requires your agency to “liberally construe” the request, and must search field offices where the requestor has indicated they would have responsive records. *See Kowalczyk v. DOJ*, 73 F.3d 386 (D.C. Cir. 1996); *Kidder v. FBI*, 517 F.Supp. 2d 17 (D.D.C. 2007).

Second, the issues with the FOIA Request raised in Letter 2 are all contained in our original FOIA request: We have named the offices and components within ICE which we are asking to be searched for records, and we have identified, defined and given a “reasonable description” specifying the records sought.

Third, your letter suggests CCR has a deadline of 10 days to respond, after which time if we did not respond, the case would be administratively closed. You cited no authority for this deadline and therefore we dispute any such 10-day requirement. Moreover, even if one existed, it would surely not begin to run on November 27th when the letter is postmarked 9 days later. .

We ask for a response from your office no later than December 30, 2013. As we have indicated in prior communications, we would like to answer any questions regarding #2014FOIA3585 to aid the agency in its searching and processing of for responsive records immediately. Please contact me, Ghita Schwarz, at (212) 614-6445 or gschwarz@ccrjustice.org if you have urgent questions or concerns.

Thank you for your attention to this matter.

Sincerely,



Ghita Schwarz

Encl/

Exhibit A



**U.S. Immigration
and Customs
Enforcement**

November 27, 2013

IAN HEAD
CENTER FOR CONSTITUTIONAL RIGHTS
666 BROADWAY, 7TH FL
NEW YORK CITY, NY 10012

Re: 2014FOIA3585

Dear Mr. Head:

This acknowledges receipt of your November 25, 2013, Freedom of Information Act (FOIA) request to the Immigration and Customs Enforcement (ICE), for information on the Detention Bed Mandate and/or Detention Quota and its impact on detention policy and detention contracting decisions nation-wide from June 2006 to present. Including copies of executed agreements related to detention facilities or detention beds, between ICE and private prison corporations, local, state, city or municipal governments. Communications regarding contract renewal, supplemental agreements, addendums and riders. Copies of all regularly generated statistical reports on detention; enforcement prioritization and detained population; detention by geographic location. Copies of cumulative data on numerical payouts to private prison corporations by ICE or DHS. Reports and memoranda reporting on the Detention Bed Mandate and Detention-related Appropriations Decisions to/from the Secretary of Homeland Security. Records about releases from detention due to budget constraints or loss of funding. Your request was received in this office on November 27, 2013.

Due to the increasing number of FOIA requests received by this office, we may encounter some delay in processing your request. Per Section 5.5(a) of the DHS FOIA regulations, 6 C.F.R. Part 5, the Department processes FOIA requests according to their order of receipt. Although DHS' goal is to respond within 20 business days of receipt of your request, the FOIA does permit a 10-day extension of this time period. As your request seeks numerous documents that will necessitate a thorough and wide-ranging search, DHS will invoke a 10-day extension for your request, as allowed by Title 5 U.S.C. § 552(a)(6)(B). If you care to narrow the scope of your request, please contact our office. We will make every effort to comply with your request in a timely manner; however, there are currently 1072 open requests ahead of yours.

Provisions of the Act allow us to recover part of the cost of complying with your request. We shall charge you for records in accordance with the DHS Interim FOIA regulations as they apply to non-commercial requesters. As a non-commercial requester you will be charged 10-cents a page for duplication, although the first 100 pages are

free, as are the first two hours of search time, after which you will pay the quarter-hour rate (\$4.00, \$7.00, \$10.25) of the searcher. We will construe the submission of your request as an agreement to pay up to \$25.00. You will be contacted before any further fees are accrued.

We have queried the appropriate program offices within ICE for responsive records. If any responsive records are located, they will be reviewed for determination of releasability. Please be assured that one of the processors in our office will respond to your request as expeditiously as possible. We appreciate your patience as we proceed with your request.

Your request has been assigned reference number **2014FOIA3585**. Please refer to this identifier in any future correspondence. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Sincerely,



Catrina M. Pavlik-Keenan
FOIA Officer





U.S. Immigration
and Customs
Enforcement
Freedom of Information Act Office
500 12th St., S.W., MS 5009
Washington, D.C. 20536-5009

OFFICIAL BUSINESS
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US OFFICIAL MAIL
\$300 Penalty
For Private Use

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\$00.46⁰
12/04/2013
Mailed From 20743
US POSTAGE

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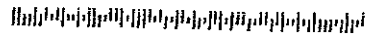


Exhibit B



**U.S. Immigration
and Customs
Enforcement**

November 27, 2013

IAN HEAD
CENTER FOR CONSTITUTIONAL RIGHTS
666 BROADWAY, 7TH FL
NEW YORK CITY, NY 10012

Re: 2014FOIA3585

Dear Mr. Head:

This acknowledges receipt of your Freedom of Information Act (FOIA) request to the U.S. Immigration and Customs Enforcement (ICE), dated November 25, 2013, seeking information on the Detention Bed Mandate and/or Detention Quota and its impact on detention policy and detention contracting decisions nation-wide from June 2006 to present. Including copies of executed agreements related to detention facilities or detention beds, between ICE and private prison corporations, local, state, city or municipal governments. Communications regarding contract renewal, supplemental agreements, addendums and riders. Copies of all regularly generated statistical reports on detention; enforcement prioritization and detained population; detention by geographic location. Copies of cumulative data on numerical payouts to private prison corporations by ICE or DHS. Reports and memoranda reporting on the Detention Bed Mandate and Detention-related Appropriations Decisions to/from the Secretary of Homeland Security. Records about releases from detention due to budget constraints or loss of funding. Your request was received in this office on November 27, 2013.

After careful review of your FOIA request, we determined that your request is too broad in scope or did not specifically identify the records which you are seeking. Records must be described in reasonably sufficient detail to enable government employees who are familiar with the subject area to locate records without placing an unreasonable burden upon the agency. For this reason, §5.3(b) of the DHS regulations, 6 C.F.R. Part 5, require that you describe the records you are seeking with as much information as possible to ensure that our search can locate them with a reasonable amount of effort. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the records, if known, or the DHS component or office you believe created and/or controls the record. The FOIA does not require an agency to create new records, answer questions posed by requesters, or attempt to interpret a request that does not identify specific records.

Please resubmit your request containing a reasonable description of the records you are seeking. Upon receipt of a perfected request, you will be advised as to the status of your request.

If we do not hear from you within 10 days from the date of this letter, we will assume you are no longer interested in this FOIA request, and the case will be administratively closed. Please be advised that this action is not a denial of your request and will not preclude you from filing other requests in the future.

Your request has been assigned reference number **2014FOIA3585**. Please refer to this identifier in any future correspondence. You may contact this office at (866) 633-1182. Our mailing address is 500 12th Street, S.W., Stop 5009, Washington, D.C. 20536-5009.

Sincerely,



Catrina M. Pavlik-Keenan
FOIA Officer





**U.S. Immigration
and Customs
Enforcement**

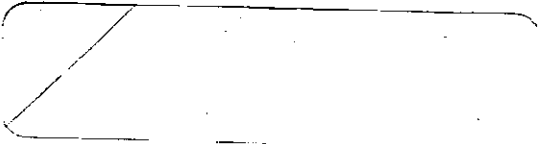
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Washington, D.C. 20536-5009

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